IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8861 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJKUMAR BANGALI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

The petitioner=detenu has by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the detention order dated 29.3.2000 (Annexure-A) passed by the respondent no. 2 in respect to detenu Manojkumar Bangali

Chauhan, in exercise of his powers conferred on him under Sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short 'the Act').

As per the papers of grounds of detention, the petitioner-detenu is a dangerous person within the meaning of section 2(c) of the Act and further that the activities of the petitioner-detenu are prejudicial to the maintenance of public order.

To arrive at a subjective satisfaction, the detaining authority has placed reliance on three cases punishable under the provisions of IPC, referred to in the grounds of detention and that three cases are pending before the court for trial. The detaining authority who passed the order of detention also placed reliance on the statements of two witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. That two statements were recorded by the Police Inspector on 15.3.2000 and 16.3.2000 respectively and said two statements were verified by the detaining authority on 24.3.2000 and the order of detention dated 29.3.2000 came to be passed against the detenu which is challenged in this writ petition.

Though rule has been served upon each of the respondents, none of the respondent has filed affidavit in reply, in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of detention for challenging the order of detention which is the subject matter of this writ petition.

Mr. HR Prajapati learned advocate for the petitioner has argued that last case registered against the detenu was a case bearing CR No. I-206/99 (Under sec. 457, 380, 114 IPC) and that case was registered on 9.12.99 and, thereafter, the detaining authority has passed an order of detention on 29.3.2000, i.e. after about 3 and 1/2 months. The detaining authority has not explained the delay for passing an order of detention after 3 and 1/2 months. Even in the statement of 1st witness, the witness narrated the incident of 16.11.99 and another witness narrated the incident of 29.11.99 and, therefore, from the papers, it appears that there were no activities of detenu after November, 1999 till the order of detention came to be passed. Under the circumstances, it was very much necessary for the detaining authority to explain the delay for passing an order of detention because from record it appears that there were no activities inasmuch as prejudicial

activities after November, 1999. Mr. Prajapati cited the authority of Ilesh Nandubhai Patel vs. Commissioner of POlice, Ahmedabad city & Ors., reported in 1997(1) GLH p. 381. In this case, this Court by placing reliance on cases of Anand Prakash Vs. State of U.P., reported in AIR 1990 SC p. 516 and Pradip Nilkanth vs. S.Ramamurthy, reported in 1993(2) Suppl. SCC 61 held that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. Under the circumstances, in this case also, the order of detention is vitiated by unexplained delay.

In view of what is stated hereinabove, the impugned order of detention is bad in law and is required to be quashed and set aside. Hence, this writ petition is allowed. The impugned order of detention dated 29.3.2000 passed by the respondent no. 2 in respect to detenu is quashed and set aside. The detenu is ordered to be released forthwith, if he is not wanted in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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